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FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:)

Implementation of Section 22)
of the Cable Television)
Consumer Protection and)
Competition Act of 1992)

MM Docket No. 92-261

Equal Employment Opportunities

COMMENTS OF THE OFFICE OF COMMUNICATION
OF THE
UNITED CHURCH OF CHRIST

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SUMMARY

The FCC should subject telephone companies offering video dialtone service to Equal Employment Opportunity (EEO) regulations and make sweeping changes in its enforcement policy in the cable TV industry.

As the RBOCs prepare to compete with traditional cable operators in the multichannel video marketplace the Commission must recognize the need to ensure that women and minorities will be afforded equal employment opportunities, particularly with respect to top management positions. The significant programming privileges granted to video dialtone (e.g. videotext news services and interactive video programming) demands that the diversity of America's populace be reflected in the decision-makers of video dialtone companies.

The Commission must also consider the monopoly and leased access characteristics that video dialtone shares with cable TV. In prior proceedings such factors provided a rationale basis for exercising EEO jurisdiction over cable TV.

The Commission's antiquated common carrier regulations are inadequate to achieve the goals of Congress - increased numbers of women and minorities in "new, emerging, and alternative technologies." Present common carrier regulations only call for self-enforcing EEO programs. Annual Employment Reports filed by the telephone companies are not reviewed for accuracy or compiled into industry-wide employment trend reports. They are simply stored in filing cabinets.

With respect to traditional cable TV operators evidence of the

need for a radical change in the Commission's enforcement policies can be found in the minimal gains that minority women and men have made since the revision of cable regulations 8 years ago. Between 1985 and 1991 the net increase in the number of Asian Officials and Managers was 75. The number of Black men and women accounts for less than 7 percent. Hispanic Officials and Managers account for less than 4 percent. The number of American Indians Officials and Managers over the period of 6 years decreased by 18. By contrast the number of non-minorities increased significantly, accounting for 80 percent of the 3,644 net increase in the number of Officials and Managers from 1985 until 1991.

Further evidence of the need for sweeping reform can be found in the fact that the Commission has assessed only one financial penalty throughout the history of its cable EEO oversight. A careful reading of the 1984 Cable Act shows that the Commission is permitted to assess financial forfeitures for violations other than repeated failures to be granted EEO certification. In drafting the 1984 Cable Act, Congress said,

For the purpose of determining whether an entity has committed repeated violations, the [House] Committee notes that it may be possible to commit more than one violation in a single year.

Report of the Committee on Energy and Commerce, H.R. Rep. No. 98-934 (1984) at 91.

OC/UCC urges the Commission to assess financial forfeitures for infractions against any of the EEO requirements of the Cable Act (e.g. failure to conduct self-assessment, failure to contact minority or female recruitment sources, or failure to evaluate turnover against the availability of minorities and women).

OC/UCC undertook two surveys to examine the ability of the Annual

Employment Report (Form 395-A) to detect discriminatory employment practices by cable operators. The surveys confirmed what is obvious from a cursory glance at Form 395-A. Operators are inclined not to accurately report that their employment practices violate the law, if the questionnaire only allows for "yes" or "no" answers.

In the first survey ninety nine percent of the questions on reports examined by OC/UCC were marked "yes" indicating that the operators were in compliance with EEO regulations. However, the responses are contradicted by the fact that 50 percent of all cable operators subjected to on-site EEO audits fail them.

It is further contradicted by a second survey that found that all of the operators that were denied EEO certification in 1991 filed reports for the same year with "yes" marked for every question. The Annual Employment Report - the instrument primarily relied upon by the Commission to assess whether or not an operator engages in employment discrimination - clearly does not accurately represent employment practices.

In the Comments that follow OC/UCC recommends that the Commission undertake several measures to improve its enforcement practices. Highlights of those recommendations are:

- The Annual Employment Report should require operators to specify the number of outside referral agencies contacted;
- The names of cable operators that are denied EEO certification should be published regularly;
- Cable operators should be required to substantiate their answers to the five year investigation report (Form SIS);

- On-site EEO audits should be conducted for at least 20 percent of the industry annually;
- The Commission should develop a model EEO incentive program that could be voluntarily adopted by companies to reward executive level personnel for EEO achievements.

With respect to the NPRM's request for comments concerning the mid-term review of broadcast licensees, such reviews should consist of an examination of the licensee's overall EEO efforts. If only a cursory examination of employment profile is conducted, the Commission is not in a position to intelligently advise licensees about the areas of their EEO programs in need of improvement.

Non-compliance with mid-term advisories issued by the Commission should result in a presumption of intent not to comply. If a licensee cannot overcome the presumption at the time of license renewal, they should be assessed a financial forfeiture in the higher range or have their renewal application denied.

TABLE OF CONTENTS

	page
I. INTRODUCTION.....	1
II. THE '92 CABLE ACT MANDATES THE FCC TO MAKE SWEEPING CHANGES IN ITS EEO ENFORCEMENT POLICY.....	2
III. THE CABLE ACT PERMITS THE COMMISSION TO ASSESS FINANCIAL FORFEITURES FOR MULTIPLE EEO VIOLATIONS WITHIN A <u>SINGLE</u> YEAR.....	6
IV. THE COMMISSION SHOULD REVISE ITS ENFORCEMENT POLICIES IN SEVERAL AREAS.....	7
A. THE HIGH FAILURE RATE OF ON-SITE EEO AUDITS DEMONSTRATES THE UNRELIABILITY OF THE ANNUAL EMPLOYMENT REPORT, FORM 395-A.....	7
B. THE PUBLIC HAS A RIGHT TO KNOW IF THE CABLE OPERATOR IN THEIR COMMUNITY PRACTICES EMPLOYMENT DISCRIMINATION. THE COMMISSION SHOULD PUBLISH THE LIST OF CABLE OPERATORS DENIED EEO CERTIFICATION.....	10
C. THE INVESTIGATION OF CABLE OPERATORS EVERY FIVE YEARS SHOULD INVOLVE A MORE THOROUGH EXAMINATION OF SUPPORTING DOCUMENTATION.....	11
D. THE NUMBER OF ON-SITE EEO AUDITS SHOULD BE INCREASED..	13
E. THE COMMISSION SHOULD DEVELOP A MODEL EEO INCENTIVE PROGRAM.....	14
V. THE COMMISSION SHOULD ENSURE THAT THE REVISED FORM 395-A WILL BE EASILY UNDERSTOOD BY CABLE OPERATORS.....	14
A. THE COMMISSION SHOULD REVISE THE DEFINITION OF CORPORATE OFFICER.....	14
B. IN ORDER TO REDUCE THE NUMBER OF MISCLASSIFIED EMPLOYEES EXAMPLES OF JOB DESCRIPTIONS SHOULD BE PROVIDED FOR EACH JOB CATEGORY.....	15
C. PROPOSED INSTRUCTIONS FOR JOB TITLES MAY BE MISUNDERSTOOD BY CABLE OPERATORS.....	16
VI. THE COMMISSION SHOULD EXERCISE EEO JURISDICTION OVER TELEPHONE COMPANIES OFFERING VIDEO DIALTONE.....	17

VII. THE MID-TERM REVIEW OF BROADCAST LICENSEES SHOULD CONSIST OF A <u>FULL</u> EXAMINATION OF EEO EFFORTS. LICENSEES FOUND NOT TO COMPLY WITH MID-TERM RECOMMENDATIONS SHOULD BE ASSESSED HIGHER FINANCIAL FORFEITURES OR DENIED THEIR RENEWAL APPLICATION.....	23
VIII. CONCLUSION.....	25
IX. EXHIBITS.....	26

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Equal Employment Opportunities

I. INTRODUCTION.

The Office of Communication of the United Church of Christ ("OC/UCC") respectfully submits Comments in response to the Commission's Notice of Proposed Rulemaking, (FCC 92-539, released January 5, 1993, ("NPRM")) in connection with the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, ___ Stat___ (1992) ("Cable Act of 1992" or "1992 Cable Act").

OC/UCC has advocated communications policy on behalf of the public interest since 1956. OC/UCC was an outspoken participant in earlier proceedings concerned with equal employment opportunity ("EEO") regulation of the cable TV industry - Docket 19246 (1972) and MM Docket 85-61 (1985). On numerous occasions OC/UCC has lobbied before Congress on behalf of women and minorities to ensure passage of effective EEO laws. The following Comments are intended to represent the views of OC/UCC and the broad spectrum of consumers interested in diversity of viewpoint in the cable TV medium.

II. THE '92 CABLE ACT MANDATES THE FCC TO MAKE SWEEPING CHANGES IN ITS EEO ENFORCEMENT POLICY.

Congress, in unambiguous terms, has called for more regulatory reforms and sweeping changes than those proposed by the Commission. The Cable Act of 1992 notes that despite the regulation of the cable industry's employment practices for over twenty years,¹ women and minorities continue to be under-represented in management and decision making positions.² The failure of the Commission's "best efforts" policy³ to improve the industry's employment practices provides the basis for the Cable Act's mandate to "rigorous[ly]" enforce equal employment opportunity.⁴

The Commission is mistaken in its interpretation of the intent of the Act. The NPRM, at para. 11, says that the purpose of the EEO amendment was to "increase attention" to women and minority

¹. The Commission first exercised EEO jurisdiction over the cable TV industry in 1972. Report and Order, 34 FCC 2d 186 (1972). The Commission's rules were revised in 1985 to conform with the Cable Act of 1984. Report and Order, 102 FCC 2d 562 (1985).

². The EEO provisions of the 1992 Cable Act begin with the statement,

Congress finds and declares that-

(1) despite the existence of regulations governing equal employment opportunity, females and minorities are not employed in significant numbers in positions of management authority in the cable and broadcast television industries;

(2) increased numbers of females and minorities in positions of management authority in the cable and broadcast television industries advances the Nation's policy favoring diversity in the expression of views in the electronic media; and

(3) rigorous enforcement of equal employment opportunity rules and regulations is required in order to effectively deter racial and gender discrimination.

³. "[T]he Commission's primary focus is on the efforts engaged in to recruit, hire, and promote qualified minorities and women." NPRM para. 2

⁴. note 2, supra.

representation. In para. 12, the NPRM says that the addition of six new job categories was to ensure accurate reporting by operators and to enable the Commission to monitor employment trends and the effectiveness of its rules. The fact is, Congress wants action by the industry and appropriate enforcement by the FCC.

The Commission's characterization of the Act falls short of the overall purpose and intent of the EEO amendment. The Act calls for the adoption of a "rigorous" approach to EEO enforcement in order to achieve the goal of diversity of viewpoint in the cable TV medium. Citing the pattern of employment discrimination that has continued since the adoption of EEO regulations in 1972, the Cable Act is, in effect, saying that the Commission's policy of focusing upon efforts has been ineffective.⁵

Based upon FCC employment trend reports, the House Telecommunications Subcommittee concluded that, "since the passage of the [1984] Cable Act, women and minorities continue to be under represented in policy and decision making positions."⁶ The Subcommittee re-affirmed its support for more women and minorities in decision making positions as a "crucial means of assuring that program service will be responsive to a public consisting of a diverse

⁵. id.

⁶. House Committee on Energy and Commerce, H.R. Rep. No. 102-628. 102d Cong., 2d. Sess., ("House Report") at 111 (emphasis provided, cite omitted).

array of population groups".⁷

During the six year period following enactment of EEO legislation in 1984, the Commission's enforcement policies have resulted in relatively few promotions and hires for minority women and men in the top jobs. FCC statistics show that from 1985 until 1991 the total number of Officials and Managers in the industry increased by 3,644. Despite the vast number of hiring opportunities the number of minority male and female Officials and Managers increased minimally during the same period.

-Officials and Managers -

Number of Male and Females Hired from 1985 to 1991

	<u>Males (1991 per.)</u> ⁸		<u>Females 1991(per)</u>	
Black	+200	(3.1)	+270	(3.3)
Asian	+31	(.7)	+44	(.5)
American Indian	-13	(.5)	-5	(.3)
Hispanic	+84	(2.1)	+109	(1.7)
net increase out of 3,644				
hiring opportunities =	<u>+302</u>	(6.4)	<u>+418</u>	(5.8)

⁷. The House Report further stated that, The Metro Broadcasting decision supports and underscores the Committees belief that there is a need for employment of increased numbers of women and minorities in upper-management positions in the cable industry and other media industries to enhance the diversity of viewing choices available to the American public.

id.

⁸. The figure within parenthesis is the percentage of minority males and females employees out of the total number of employees within a particular job category.

The total number of employees in the Professional job category increased by 1,773 between '85 to '91. The marginal increase in the number of minority males and females Professionals was:

- Professionals -

Number of Male and Females Hired from 1985 to 1991

	<u>Males (1991 per.)</u>		<u>Females 1991(per)</u>	
Black	+48	(3.6)	+99	(4.9)
Asian	+12	(1.0)	+30	(1.2)
American Indian	+6	(.2)	-1	(.1)
Hispanic	+47	(2.3)	+50	(2.3)
net increase out of 1,773				
hiring opportunities =	<u>+113</u>	(7.1)	<u>+178</u>	(8.5)

Exhibits I - X summarize the above data in graphic form. All of the above information is derived from FCC Employment Trend Reports for 1985 and 1991.

The decrease in the number of American Indians and the minimal gains for Asians highlights the ineffectiveness of the Commission's enforcement efforts. In the case of Blacks, who fared better than other minorities, their gains are dwarfed by the number of hires for non-minorities (see Exhibits I - X). In view of these developments, the Commission should broaden the scope of this proceeding and examine some of the rudimentary problems that plague its enforcement policies.

III. THE CABLE ACT PERMITS THE COMMISSION TO ASSESS FINANCIAL FORFEITURES FOR MULTIPLE EEO VIOLATIONS WITHIN A SINGLE YEAR.

Despite the dismal EEO track record of the cable industry, only one operator has ever received a financial forfeiture.⁹ The broadcast industry, on the other hand, has been penalized on numerous occasions, and relative to cable TV has a better EEO track record.

The primary reason for this difference is the Commission's narrow interpretation of the EEO provisions of the 1984 Cable Act. The financial penalty clause of Section 634(f)(2) of the Communications Act is triggered by an operator who "willfully or repeatedly" violates the Act's EEO requirements. 47 U.S.C. 554(f)(2). Present Commission policy interprets the term "violation" to mean denial of EEO certification. It was the express will of Congress, however, that a "violation" is an infraction against any of the Act's EEO provisions.

The failure to obtain certification under subsection (e) of this section shall not itself constitute the basis for a determination of substantial failure to comply with this title. Section 634(f)(1) of the Communications Act of 1934.

The FCC has broad latitude for finding an operator in noncompliance for the purpose of imposing a financial forfeiture. Further guidance is found in the legislative history.

For the purpose of determining whether an entity has committed repeated violations, the Committee notes that it may be possible to commit more than one violation in a single year." House Committee of Energy and Commerce, H.R. Rep. No. 98-934, 98th Cong. 2d Sess., (1984) at 91.

Contemplating that multiple violations might occur in one year,

⁹. Notice of Apparent Liability to Prime Cable, FCC 89-8, February 22, 1989.

Congress clearly intended for operators to be penalized for various types of violations of the Act or EEO regulations (e.g. failure to conduct self-assessment, failure to contact minority or female recruitment sources, or failure to evaluate turnover against the availability of minorities and women).

Elsewhere the statute says,

Any person who is determined...to have failed to meet or failed to make best efforts to meet the requirements of this section, or rules under this section, shall be liable to the United States for a financial forfeiture of \$500 for each violation." Section 634(f)(2) of the Communications Act of 1934. (emphasis provided)

The term "each violation", taken together with the phrase "requirements of this section, or rules under this section", means that penalties should be assessed for each infraction of the Act or FCC rules. The Commission's policy of imposing financial forfeitures based upon denial of certification undermines and defeats the intent of the Act.

The Commission's current policy should be revised to deem each violation of the Act or Commission rules as "a substantial failure to comply". Only by means of a rigorous enforcement program can the Commission expect to significantly increase the numbers of women and minorities in upper level management positions.

IV. THE COMMISSION SHOULD REVISE ITS ENFORCEMENT POLICIES IN SEVERAL AREAS.

A. THE HIGH FAILURE RATE OF ON-SITE EEO AUDITS DEMONSTRATES THE UNRELIABILITY OF THE ANNUAL EMPLOYMENT REPORT, FORM 395-A.

Interviews with the staff of the FCC's Equal Employment Opportunity Branch indicate that 50 percent of the cable operators

subjected to on-site audits are found to be in violation of the Act.¹⁰ Inspections are intended to verify the accuracy of Annual Employment Reports (Form 395-A) filed with the FCC.

As noted by the NPRM in para. 4, "Form 395-A requires answers to nine questions about the cable operator's EEO efforts." Six of the nine questions have been adapted from the Cable Act of 1984 (see Section 634 (d) (2) of the Communications Act). Form 395-A requires operators to indicate whether they contact minority organizations as part of their recruitment effort, whether promotions are carried out in a non-discriminatory manner, and whether they analyze the results of their EEO efforts, etc. (See Exhibit XI). Each question requires a mere "yes" or "no" response. No supporting documentation is required to be submitted.

In an effort to evaluate whether the Report is effective in identifying operators that violate the Act, OC/UCC examined 85 Employment Reports filed with the Commission in 1991. Seven hundred and fifty six (or 99 percent) of the 765 questions were answered with a yes.¹¹ It is difficult to reconcile this result with the 50 percent failure rate of on-site audits.

The high percentage of "yes" answers is consistent with what would be expected from a cursory examination of the questionnaire. It is highly unlikely that any business would implicate itself by

¹⁰. Interview with staff of FCC EEO Branch on February 14, 1993.

¹¹. Question # 2 was responded to in the negative only nine times. Positive responses were qualified with exhibits and explanations three times.

indicating on a government report that it is not complying with the rules and regulations. Form 395-A is tantamount to self-regulation. Operators cannot be relied upon to accurately report their employment practices as a second survey reveals.

OC/UCC also examined the Annual Employment Reports of the cable operators that were denied EEO certification in 1991. One hundred percent of the answers on Reports filed with the Commission for 1991 were "yes".¹²

Both the above surveys indicate that the Annual Employment Report - the primary instrument relied upon by the Commission to ascertain an operator's EEO "efforts" - does not accurately represent employment practices. OC/UCC recommends that the Commission amend Form 395-A by:

1) revising the second question to require a quantitative response. Specifically - "Since filing your last Form 395-A, how many organizations in the following categories have you contacted for applicants, whenever job vacancies are available in your organization: a) minority organizations, b) women's organizations, c) media institutions, d) educational institutions, and e) other potential sources minority and female applicants."

2) adding a question 10 to the Form designed to ensure that an operator maintains a record-keeping system of its EEO program. Specifically - "Do you maintain a record-keeping system for your EEO program that can substantiate all of your affirmative responses to the questions above? yes__ no __"

¹². The nine operators that were denied certification in 1991 were: Eastern Telecom Corporation of Allegheny Cty. PA., Blue Ridged CATV Inc. of Carbon Cty. PA., Northland Cable Television Inc., of Madera Cty. CA., Heritage Cablevision of S.E. Massachusetts of Providence, R.I., Mission Cable Company of Austin, Texas, R&R Technologies Inc., of Gwinnet Cty. GA., and Mission Cable Company of Travis Cty. TX. The last two units are either regional or corporate headquarters.

A record-keeping system is the heart of any EEO program. If an operator documents its EEO practices, it is in a better position to self-assess its efforts and recruit women and minorities appropriately. Indeed, the most frequent cause of EEO audit failures, according to staff at the FCC, is the absence of a record-keeping system and/or failure to properly recruit.¹³

B. THE PUBLIC HAS A RIGHT TO KNOW IF THE CABLE OPERATOR IN THEIR COMMUNITY PRACTICES EMPLOYMENT DISCRIMINATION. THE COMMISSION SHOULD PUBLISH THE LIST OF CABLE OPERATORS DENIED EEO CERTIFICATION.

Each year the Commission is required to determine whether every cable operator is in compliance with the EEO requirements of the Cable Act. Section 634(e)(1) of the Communications Act of 1934. Denial of certification means that an operator has failed to afford equal employment opportunity in accordance with the standards of Sections 634(b), (c), (d) of the Act.

The list of operators denied certification is maintained for the internal use of the Commission and is not released to members of the public, except upon special request.

Denial of certification holds little significance, if the identity of operators that engage in employment discrimination is kept a secret. The Commission forfeits the opportunity to improve employment practices by not publishing the identities of non-complying operators. Like any other business, cable operators have a natural incentive to correct business practices that would otherwise undercut their public image.

In addition to releasing information to the general public,

¹³. Interview with staff of FCC EEO Branch on February 14, 1993.

the Commission should provide special notice to the franchise authorities where operators conduct business. Subscribers have a right to know if the cable operator serving their community engages in employment discrimination.

In order to avoid untimely delays due to the processing backlog at the Commission, OC/UCC urges the Commission to release the names of operators as the list is updated. The public should not have to wait two to three years before receiving notice.

C. THE INVESTIGATION OF CABLE OPERATORS EVERY FIVE YEARS SHOULD INVOLVE A MORE THOROUGH EXAMINATION OF SUPPORTING DOCUMENTATION.

The Cable Act requires the Commission to investigate the employment practices of each operator "not less frequently than every five years". Section 634(e)(2) of the Communications Act. ~~at~~ description of the fifth year investigation provided in the NPRM is misleading.¹⁴ The entire list of 18 questions contained on the Supplemental Information Sheet (SIS) is not required to be completed. Based upon the operator's most recently filed Annual Employment Report, FCC staff select a few questions on the SIS to be completed by cable operators. As few as three questions are routinely required to be completed.¹⁵

The fact that FCC staff select questions based upon an operator's

¹⁴. [C]able operators are required to complete a Supplemental Information Sheet (SIS) every five years. This sheet requests additional specific information regarding recruitment efforts and job classifications. NPRM para. 4, (emphasis provided, cite omitted).

¹⁵. Interviews with FCC EEO specialists January 14 and February 1, 1993

Annual Employment Report - shown earlier to be non-representative of employment practices - is an indication that the SIS does not constitute a thorough investigation. The few answers that each operator provides do not require supporting documentation. Furthermore, given the unlikelihood of an on-site audit (see subsection D, infra), most operators probably submit "boilerplate" answers every five years.

OC/UCC recommends that the five year investigation consist of a request for documentation to support activities in the following areas:

- reliance upon minority and other referral agencies as a part of the recruitment effort;
- evaluations of employment profile and job turnover against the availability of women and minorities in the labor market;
- efforts to promote women and minorities in positions of greater responsibility;
- self-assessment and analysis of efforts and difficulties encountered in implementing the EEO program;
- efforts to business with female and minority entrepreneurs; and
- efforts to ensure that each level of management is informed and, in fact, carries out its EEO responsibilities.

In order to conduct the thorough investigation that Congress intended operators must be required to do more than respond to the same routine questions every five years. The SIS should be revised periodically to prevent operators from developing boilerplate answers. Answers supported with documentation would help to off-set the insufficient number of on-site audits.

D. THE NUMBER OF ON-SITE EEO AUDITS SHOULD BE INCREASED.

The Commission should allocate funds to perform more on-site audits. The current practice of conducting 10 audits each year is insufficient considering that there are over 2,300 cable operators and that half of the audited cable operators fail the inspection of their EEO program.¹⁶ Ten audits annually represents less than half of 1 percent of the total number of cable TV operators.

Operators generally fail on-site audits because: 1) of their inability to produce evidence that they have recruited from minority and female referral sources, 2) they do not maintain an EEO record-keeping system that would enable them to assess their EEO efforts, 3) they misclassify employees in job categories of the Annual Employment Report. According to FCC staff, field inspections often turn into EEO training sessions.

The failure to conduct a significant number of audits contributes to the problems already discussed above: a) the Annual Employment Reports do not accurately represent employment practices, b) responses to SIS questionnaires are not supported with documentation, and c) only one cable operator has ever received a financial forfeiture for EEO violations. The Commission's enforcement efforts would be greatly enhanced if at least 20 percent of the industry is inspected annually.

¹⁶. id.

E. THE COMMISSION SHOULD DEVELOP A MODEL EEO INCENTIVE PROGRAM.

To ensure that operators are doing their job in the area of EEO as effectively and as aggressively as other areas of their business, the cable industry should be encouraged to adopt EEO incentive programs for executive level managers. Such a program should reward executives for the achievement of EEO objectives in areas of the company for which they are responsible. The reward system would operate the same as it does for other incentive programs. EEO achievements should be considered as a factor in determining end-of-year bonuses. Examples of such EEO objectives would be the promotion of minorities and women in a non-discriminatory manner and identifying qualified applicants from female and minority recruitment sources outside of the company.

OC/UCC does not believe that the Commission should impose incentive program on the industry. A more effective approach would be for the Commission, following opportunity for public comment, to develop a model program for voluntary adoption. An EEO incentive program, voluntarily adopted and tailored to the individual needs of individual companies would go a long way towards simulating self-enforcement, and signal the importance of corporate EEO policies to decision-making personnel.

V. THE COMMISSION SHOULD ENSURE THAT THE REVISED FORM 395-A IS EASILY UNDERSTOOD BY CABLE OPERATORS.**A. THE COMMISSION SHOULD REVISE THE DEFINITION OF CORPORATE OFFICER.**

With the exception of Corporate Officer, OC/UCC supports the proposed definitions for the six new job categories. However, the

proposed definitions could be augmented with examples of job descriptions that are appropriate and inappropriate for the six new categories. The examples should be included with the Form 395-A.

OC/UCC is concerned that the definition for Corporate Officer, as proposed in the NPRM, may be misunderstood. The term "fiduciary" used to define Corporate Officer is a legal term of art that might be subject to many interpretations outside of the legal profession. OC/UCC, therefore recommends adoption of the following definition for Corporate Officer:

A person selected, in accordance with the company's governing regulations (e.g. Bylaws), to act primarily for the company's benefit in a defined capacity.

The reference to governing regulations should ensure that only individuals with a fiduciary obligation are placed in this category.

**B. IN ORDER TO REDUCE THE NUMBER OF MISCLASSIFIED EMPLOYEES
EXAMPLES OF JOB DESCRIPTIONS SHOULD BE PROVIDED FOR EACH
JOB DESCRIPTION.**

According to EEO branch staff interviewed by OC/UCC, many operators "do not understand" the definitions provided for the present nine job categories.¹⁷ As a consequence, many operators inadvertently misclassify their employees on the Annual Employment Report. It is an oversight on the part of the Commission to say that, "It has been our experience that [the existing nine] definitions are, in fact, adequate." NPRM para. 14.

Considering the important role that the Annual Employment Report plays in the Commission's effort to monitor industry-wide employment

¹⁷. Interview with EEO Branch staff, February 14, 1993.

trends it is extremely important that employees be accurately classified.

Instead of revising the existing definitions, OC\UCC recommends that the Commission provide more detailed examples of the kinds of job descriptions that are appropriate and inappropriate for each of the nine categories. Operators should be informed that an Office Manager with clerical responsibilities or a Building Supervisor with janitorial duties should not be classified as an Manager.

Such guidelines would greatly aide operators in making classification decisions. As in the case of the six new job categories, the examples should be conveniently included with the Form 395-A.

C. PROPOSED INSTRUCTIONS FOR JOB TITLES MAY BE MISUNDERSTOOD BY CABLE OPERATORS.

The NPRM proposes to amend Form 395-A by adding an additional Section VIII for reporting job titles. NPRM para. 13. The format of the new Section VIII appears appropriate for its intended purpose, however, OC\UCC is concerned that the instructions can be easily misunderstood to request job titles for the nine present categories.

OC\UCC recommends that the instructions be revised to read as follows:

"For each of the 15 job categories, please provide, by job title, the number, gender and race or national origin of employees for each of the above-listed job categories. Reprint and use additional sheets so as to classify each employee under the appropriate job category."

The explicit reference to "15 job categories" will ensure that operators will complete a separate Section VIII for all the job

categories that apply to their company.

VI. THE COMMISSION SHOULD EXERCISE EEO JURISDICTION OVER TELEPHONE COMPANIES OFFERING VIDEO DIALTONE.

For the purpose of equal employment opportunity the 1992 Cable Act defines the term cable operator to include any "multichannel video programming distributor". The Act defines a "multichannel video programming distributor" as,

a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.
Section 2(c)(12) of the Cable Act of 1992.

OC/UCC maintains that the EEO goals of the Cable Act can be achieved only if the Commission interprets the term "multichannel video programming distributor" to include video dialtone service. Commenting on the kinds of services subject to the EEO provisions of the Cable Act, the House Telecommunications Subcommittee said,

This provision reflects the Committee's belief that it is important to ensure females and minorities equal employment and promotional opportunities in new, emerging, and alternative technologies.

House Report at 113 (emphasis provided).

Video dialtone, the most significant of the emerging technologies, was undoubtedly intended to be included in the phrase "new, emerging, and alternative technologies." The Commission's recently decided Telephone\Cable TV Crossownership decision anticipates that telephone companies will rapidly deploy an advanced telecommunications

infrastructure in response to technological and market incentives.¹⁸ Indeed, US West recently announced plans to deploy video dialtone throughout its service area beginning in 1994.¹⁹ The announcement by US West follows by only a few months a similar announcement by Bell Atlantic. As the telephone industry competes with traditional cable operators in the multichannel video marketplace, it should be subjected to the same EEO requirements. As explained more fully below, the hiring practices of the telephone industry will greatly influence the images and social norms conveyed over its video transport facilities.

The Commission is compelled to exercise EEO jurisdiction over video dialtone providers for three reasons. First, existing common carrier EEO regulations are inadequate to ensure that significant numbers of women and minorities will hold decision-making positions. Adopted in 1970²⁰ - two years before the adoption of cable TV EEO regulations - the Commission's common carrier regulations merely require telephone companies to adopt self-enforcing EEO programs and to file Annual Employment Reports with the Commission.

Over the past 30 years, the Commission has not undertaken any

¹⁸. Second Report and Order, CC Docket No. 87-266, FCC 92-327 (1992) ("Second Report and Order") para. 25.

¹⁹. Communications Daily, February 5, 1993, page 1.

²⁰. Report and Order, 24 FCC 2d 725 (1970) ("Common Carrier Report and Order"); see 47 CFR 21.307 concerning point-to-point microwave (i.e. the transmission of radio and TV signals), 47 CFR 22.307 governing cellular and mobile telephone, and 47 CFR 23.55 governing international transmissions.